IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.807 OF 2006
IN
CIVIL APPEAL NO.265 OF 2002
IN
R.C.S. NO.55 OF 1997
WITH
CIVIL APPLICATION NO.790 OF 2006

ALONGWITH
SECOND APPEAL NO.808 OF 2006
IN
CIVIL APPEAL NO.266 OF 2002
IN
R.C.S. NO.58 OF 1997
WITH
CIVIL APPLICATION NO.792 OF 2006

Sou. Suman Pandit Wadje ....Appellant
V/s.
Shri.Jairam Dada Wadje ....Respondent

Mr.K.K. Tated for Appellant.
Mr.P.N. Joshi for Respondent.

CORAM : V.M. KANADE, J.

DATED : 10th JULY, 2007.

P.C:-

1. The Appellant is challenging the order passed by both the lower Courts whereby suit which was filed by her for specific performance of agreement executed between the parties in the year

1984 was dismissed and the suit filed by the Respondent for perpetual injunction restraining the Appellant herein from disturbing possession of the Respondent, was allowed by both the lower courts.

2. The Appellant and the Respondent executed agreement of sale in which total consideration in respect of suit land was of Rs.13,500/- and it is case of the Appellant that he paid earnest amount of Rs.8,000/- and the agreement of sale was registered on 4/12/1984. One of the condition of agreement of sale was that the Respondent would obtain permission from competent authority seeking permission to sale land and thereafter, balance consideration will be paid by the Appellant and the land would be handed over to the Appellant herein. Since, no steps were taken by the Respondent herein, She filed suit in 1997 for specific performance. The Respondent also filed suit for injunction against the present Appellant.

3. Learned counsel appearing on behalf of the Appellant submitted that the Courts below have erred in holding that the Appellant was not ready and willing to perform her part of the contract

and therefore, was not entitled for decree of specific performance. He invited my attention to the finding recorded by the both the courts below and submitted that lower Courts had ignored fact that under the agreement Respondent was to obtain permission. He submitted that the Appellant came to know in 1994 that it is not necessary to obtain permission from the competent authority and therefore, suit was filed in 1997 and suit was within limitation.

4. It is not possible to accept the submissions made by the learned counsel for the Appellant in respect of finding recorded by the lower Courts below regarding readiness and willingness of the Appellant herein to perform her part of contract and the finding of fact which has been confirmed by the lower Appellate Court. In my view, there is no substantial question of law raised in the Second Appeals. Hence, both the Appeals stand dismissed.

5. Since, both the Appeals are dismissed, Civil Applications do not survive and are accordingly disposed of.

V.M. KANADE, J.